

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KATHLEEN P. MULLINIX,)
Plaintiff,)
v.)
KIKI BOGORAD-GROSS and)
LEONARD P. BOGORAD, as They)
Are Executors of the Will of)
Lawrence Bogorad,)
Defendants.)
)
)
)

Civil Action
No. 04-12684-WGY

AFFIDAVIT OF KIKI BOGORAD-GROSS

I, Kiki Bogorad-Gross, first being duly sworn, hereby depose and state:

1. I was born on June 27, 1953 to Lawrence Bogorad and Rosalyn Bogorad. My father passed away on December 28, 2003. I was appointed co-executor of his will by a decree of a Justice of the Middlesex County, Massachusetts, Probate and Family Court. I am a Defendant in the above-captioned matter as Executor of my father's will. Except where otherwise indicated, I make this affidavit from facts within my personal knowledge and I believe all matters set forth herein to be true.

2. I married James Gross ("Jim") in 1978. We have two children, Daniel Gross ("Daniel"), born in 1983, and Benjamin Gross ("Ben"), born in 1986. Daniel graduated from the University of Rochester in 2005. Ben is currently a sophomore at Clark University.

3. I graduated from the University of Massachusetts at Amherst in 1976 in Interior Architecture. I subsequently took graduate courses in Interior Architecture at Howard University in Washington, D.C. I stayed in Washington, D.C. and worked for an interior design firm

(Interspace, Inc.). Later, I moved back to Massachusetts and worked at an architectural firm in Cambridge, Massachusetts, ARC, Inc., until July 1983. I left ARC when I had our first child and worked part time for Lloy Hack, Interior Designer, for a few years. After the birth of our second son in 1986 I worked part time for Fund for the Arts in Newton (FAN) in Newton, Massachusetts. In approximately 1996 I began working part time at Ritz Associates, a furniture manufacturer's representative group, then located in Newton, Massachusetts. In approximately 2002 I began working full-time at Ritz Associates, now located in Boston, MA, where I am still employed.

4. I had a warm and close relationship with my father throughout my life. From the time I left for college in 1971 until his death on December 28, 2003, I spoke to my father at least once a week on the phone. If I called him, I would call him at his home in Lexington, Massachusetts, or at his office at Harvard University in Cambridge, Massachusetts, where he spent the week days if he was not traveling for business. For at least the last five years of my father's life, I saw him about once every two weeks when he would come over to my house for dinner with my family. Usually, my father came to dinner alone. For the last several years of his life for holidays or other special occasions he occasionally brought Kathleen Mullinix ("Mullinix"), the plaintiff in this case.

5. Our dinner discussions consisted of the important events in our lives at that time, such as vacation plans. Regular discussion topics included what my children were doing at that time and my mother. To my knowledge, my father visited my mother, an Alzheimer's patient, approximately two or three times a week at the Fairlawn Nursing Home in Lexington, Massachusetts.

6. My father shared important financial matters with Jim and me, such as a change in his will, the potential sale of his house in Lexington, Massachusetts, and the purchase of a new car and new computer. In late 2002 my father called me to tell me that he was amending his will to include Mullinix. I had no objection to his proposed amendment. Thereafter, on December 19, 2002, my father emailed Len and me reaffirming his desire to include Mullinix in his estate plan. In the email my father confirmed that he would send my brother and me the necessary paperwork to sign in our capacities as executors of his estate after we (my father, my brother and me) returned from the annual Bogorad family vacation, which that year we spent in Southeast Asia.

7. In 1999 or 2000 my father told me he was contemplating selling his house in Lexington, Massachusetts. At that time, he told me he felt the house was too big for one person, it was too far from his office, and the upkeep was expensive. He thought he would prefer a condominium closer to his office in Cambridge, Massachusetts. My father never told me he wanted to sell his house so that he could move to New York City to live with Mullinix; in fact, at no time did my father say anything to me, in words or in substance, that he ever intended to move to New York. To the best of my recollection, I accompanied my father to look at two apartments either on or close to Memorial Drive in Cambridge. Both apartments were two bedrooms and I understood that my father intended to use one of the bedrooms as a study. Ultimately, my father decided against selling his house in Lexington because it would be too much trouble to clear out the house.

8. Although my father did not make many large purchases, he would discuss any potential large purchases with me beforehand. For example, in 1998 my father told me that he wanted to buy a new car. He said it would probably be the last car he would ever have, so he

wanted it to be fun and flashy. He bought a used 1997 red Saab convertible and I went with him when he picked it up for the first time. Another example is my father's purchase of a new computer. After his heart surgery in 1997, he told me he wanted to buy a new computer to be able to work at home while he recuperated. We discussed the type of computer that he should buy, and, ultimately, he purchased a Gateway computer.

9. My father was very generous with his money; he loved to give gifts. In the summer of 2001—the summer before Daniel entered college at the University of Rochester—my father approached me and told me he wanted to give me money to help pay for my children's education. I told him it was not necessary, but he insisted that he wanted to help defray the cost of college tuition. Subsequent to our conversation, my father approached Jim and reiterated his desire to help pay for college expenses. Shortly thereafter, my father hand delivered to Jim a check for \$10,000 made payable to the University of Rochester. We also received a \$10,000 check in a similar fashion for 2002 and 2003, although there was no contribution for 2004. As Ben entered college after my father died, there was no contribution from my father, or his estate, for Ben's college tuition.

10. My father passed away in the early morning hours on December 28, 2003, while on a Bogorad family vacation in Puerto Vallarta, Mexico. It was decided that my brother Len would stay in Mexico to take care of administrative matters with the U.S. State Department and my immediate family and Mullinix would fly back to Boston. Mullinix stated that she wanted to fly back to Boston so she could be with my father's things. My brother Len made arrangements for me, my immediate family and Mullinix to fly back to Boston that afternoon, with a stop in Houston, Texas.

11. During the trip from Mexico to Boston, Mullinix went through periods of being terribly distraught. I was also very upset. At the airport we made phone calls to friends and family at home. I made small talk with Mullinix while we waited for the flight.

12. Mullinix and I sat next to each other on the flight to Boston. Jim sat approximately 10 rows behind us so he could not hear our conversation. Mullinix was still distraught, as was I. We were making small talk when the expression on her face changed. She looked at me and said, blurted out, "Oh my God. "Laurie was going to pay for \$400,000 of the renovations. What am I going to do?" In an attempt to calm her down, I told her not to worry, that we would "figure it out."

13. Her statement surprised me because I had not heard that my father was going to give her money for the renovations, even though I had discussed Mullinix's renovations with my father on several occasions prior to his death. In fact, before my father died but after Mullinix's purchase of the new Fifth Avenue apartment, I discussed the status of that apartment and Mullinix's renovation plans frequently. At one point in 2003, I saw the renovation plans and discussed various kitchen cabinets with Mullinix and my father.

14. No one knew anything about my father wanting to give Mullinix \$400,000, or any other amount, for her renovations.

15. Subsequently, Jim, Len and I met with my father's estate lawyer, Matthew Berlin from Rubin & Rudman, to discuss the administration of my father's estate and Mullinix's demands.

16. Mullinix moved into my father's home in Lexington, Massachusetts, after the renovations to her Fifth Avenue apartment started. I saw her or spoke to her once or twice a week. We were always friendly.

17. In the beginning of 2004, Jim, Len, Cindy and I started discussing plans to sell the Lexington house. To the best of my recollection, I had a general conversation with Mullinix in person about selling the Lexington house. She suggested that we would probably want to sell the house in the Spring.

18. In or around April 2004 I contacted a realtor at Carlson GMAC. I then spoke to Mullinix about wanting to show the house. I asked her when she would be home because I did not want to barge in on her. Mullinix never had a problem with us showing the house.

19. We placed the Lexington house on the market in late April, 2004. The house was on the market a week. We signed a Purchase and Sale Agreement on May 4, 2004. Mulllinix never objected to moving out of the Lexington house and, in fact, she offered to help with the pre-sale "cleanup" and other similar activities that would be necessary to effectuate a sale.

20. Throughout this time, I was emailing with Mullinix regularly. The emails were always very cordial and copies of the ones I saved are annexed hereto as Exhibit A. In fact, when I was disbursing my father's personal possessions, I asked if she wanted some of my father's furniture and paintings and she accepted. I believe she took his dining room set, some chairs and one of his Japanese prints.

21. Mullinix never paid rent, utilities, the phone bill or for the upkeep of the Lexington house while she lived there.

22. Mullinix never asked me whether the estate could or would pay for alternate housing for her pending the completion of the renovations.

Signed under the pains and penalties of perjury this 23rd day of May, 2006.

/s/ Kiki Bogorad-Gross
Kiki Bogorad-Gross

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on May 25, 2006.

/s/ Lisa M. Hodes

EXHIBIT A

Solfanelli, Sara E.

From: Kathleen Mullinix [kathleenpmullinix@yahoo.com]
Sent: Thursday, March 11, 2004 7:02 AM
To: kikibg@hotmail.com; lbogorad@rclico.com
Subject: Transition

Dear Kiki and Len,

I'm writing to share some thoughts with you as you prepare to dispose of the house in Lexington. As we have discussed, I would like to spend time here, most likely several days each week, until my home in New York is ready. I also plan to do everything that I can to help to make the transition is as smooth as possible. With that in mind, I have some suggestions.

It seems to me that it would be helpful if I consolidated my things in order to make more of the space in the house readily accessible. I propose to try to confine my things to the bedroom and the small room on the first floor. I will move my things out of the small bedroom on the second floor and will continue to use the office desk, but will arrange my things in the room to be as organized as possible. As you know, I brought many of my personal things with me when I moved here last April. Many of those things are in the small room downstairs. In addition, there are many things of my mother's in that same room that I brought here after her death last March. I will organize those things to make them as consolidated as possible. That should facilitate the work of the painters. I also have a few things in the basement, including my golf clubs and some of our outside furniture that we brought from New York. I hope that those things will not interfere with the organization of that space.

I would like to keep those many of your father's clothes that have sentimental value. I have, however, been emotionally unable to go through his clothes and would like them to remain in place in the closets and drawers until I can work with them. As I mentioned to Kiki, I would like to keep some of his books, especially his old scientific texts and the books that he edited.

I will be away for ten days, beginning on March 18. I think that it is a good time for me to arrange to forward the mail to Kiki, with the hope that I could pick up my mail from Kiki from time to time.

I look forward to receiving your thoughts on these suggestions. I reiterate my offer to be of assistance in any aspect of this process on which you think I could be helpful.

Best regards,

Kathy

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Dineen Jerrett, Michelle L.

From: Kiki Gross [kikibg@hotmail.com]
Sent: Wednesday, May 12, 2004 6:39 AM
To: kathleenpmullinx@yahoo.com
Subject: Various

Sorry, Kathy, I started this yesterday and got interrupted....

Thanks for the Mother's Day Greetings. Hope you got back to NY ok and then went out to dinner or something. And yes, it is good to be past that toddler stage, although breakfast in bed, even though it was usually cold, was kind of a nice treat.

I don't feel as if I need to be at Dad's office when they go through things - I'm sure I wouldn't know what was important. If there are personal things that are left, I'd like a chance to see them, I guess. You probably have things that you'd want more than me. Thanks for asking, though. It's kind of hard to think about that space not being his (or relating to us) - so many years of waiting downstairs in the car flashing the lights! (Sorry!)

In terms of the house, I'll be clearing things out over the next few weekends I guess - there's so much. Please let us know if there's anything you want. I will keep an eye out for your bracelet. We are planning on closing on the last Friday of June - I think that's the 25th. I was hoping to have another weekend, but I guess that's not going to happen. I hope this will work for you. If you need help with anything, please let us know.

In terms of the car, I think that Len will be taking it - it will be nice to keep it in the family I think. I would like to take it to the Saab dealer to get it checked out first and then would actually like to "borrow" it for a few weeks after Dan comes home (end of May). I hope that's ok. You're welcome to "borrow" it back when you like if you want to drive it again. If I make an appointment for sometime next week, will that work for you?

Talk to you soon,
 Kiki

----- Original Message -----

From: Kathleen Mullinx
To: kikibg@hotmail.com
Sent: Sunday, May 09, 2004 9:51 PM
Subject: Various

Dear Kiki,

Happy Mother's Day--I hope that you had a great day. It always seemed so good to me to be beyond the toddlers' crawling into bed with the spilling orange juice and the toast (or other safe item) slipping off the plate.

I have a few things:

- 1) Maybe you could be on the lookout for a rather heavy linked gold bracelet around the house. I don't seem to have it, the clasp is not the greatest, and it could be anywhere. In the event that it fell on one of the rugs, you might see it. I'm hoping that it is with me somewhere, or mixed up in the bed.
- 2) The administrator at Harvard has asked about cleaning our your father's office. The plan is that they will send an archivist some time soon who will do whatever he or she does. I don't know what they do but Jay Ballofet said it is not necessary to be present (I had the impression that they prefer

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that the archivist does his or work alone). After that, we are free to go through the things, take what we want, and they will dispose of the remaining things. Alice Cheung and Maureen Hanson have offered to go through the things with me and identify what belongs to whose work. We are planning to ask people if they want their material, note books, photos, etc. (He took pictures of everyone in the lab. I'm assuming that they are there somewhere.) Please let me know if you and/or Len want to be involved in that process, and I will certainly arrange the schedule around your availability. Of course, at the end of the day, any personal items that remain would be assembled for your examination before things are finally removed.

3) Also in the schedule department, could you tell my by what date I must have all of my things out of the house?

Best regards,
Kathy

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Solfanelli, Sara E.

From: Kiki Gross [kikibg@hotmail.com]
Sent: Saturday, May 15, 2004 8:37 AM
To: kathleenpmullinx@yahoo.com
Subject: this weekend

Hi Kathy - I wasn't sure if you were going to be in Lexington this weekend but wanted to check in. I was planning on going out and starting to clean out the kitchen - I'll start with old spices, canned goods,etc. If there's anything that you can think of that you want, please let me know. I don't want to throw anything out that's yours.

Is there anything else in the house you'd like - Dad's Harvard chair, etc? Just let me know, k?

We were also planning on taking the Saab to the garage on Monday (will pick up on Sunday) to get it checked out - there also seems to be some burning smell. Hope that's ok.

Did you get your internet connection (Blackberry,etc.) worked out in NY? I hope so.
Talk to you soon,
Kiki

Solfanelli, Sara E.

From: Kathleen Mullinix [kathleenpmullinix@yahoo.com]
Sent: Saturday, May 15, 2004 3:08 PM
To: kikibg@hotmail.com
Subject: House, etc.

Dear Kiki,

Having emptied my parents' house, I don't envy you your task. I hope your knees hold out better than mine did. I'm also worried about your shoulder.

I'm not sure when I'll be up in Lexington next. I'd planned on being there over Memorial Day but "Grandparents' Day" is on the 27th at Jack's school and Kathleen has asked me to attend. Considering all of the trauma in December, I can't really say no. So that's to be figured out.

With respect to the car, I did not experience a burning smell so that's got to be something new. I would like to take some pictures of the car when I come up. I'd hoped to take pictures at the house so I hope that will be OK.

I would like to have the Japanese print that is in the living room by the stereo. Your father loved that and he had planned to bring it to New York. If no one else wants the two small chairs in the living room or the dining room furniture, I'd be very happy to take those things.

I would so like to have all of his clothes--his jackets with the hoods that he loved, on and on. I know that is ridiculous but if the clothes could stay a bit longer maybe I could have a more settled view of reality and the inevitable. I think that I have the idea that as long as his clothes remain he might come back. I remember that the first thing that I did when I got back from Mexico was to put his comb and brush and his toothbrush back in the bathroom. I'm afraid I'm still there a bit.

I have an Internet connection here at the furnished studio that I have rented on 74th Street while that apartment is being renovated.

That's it for now. My thoughts are with you.

Kathy

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Solfanelli, Sara E.

From: Kathleen Mullinix [kathleenpmullinix@yahoo.com]
Sent: Thursday, May 27, 2004 5:04 PM
To: kikibg@hotmail.com
Subject: Next week

Dear Kiki,

I'm thinking of you and hoping that you are not too overwhelmed by the process of working on the house. I found the process of dismantling my parents' house to be very difficult---on many levels.

I plan to drive up to Lexington on Tuesday afternoon and to move my things out of the house over the following few days. Thank you for offering the furniture. In that regard, it occurs to me that if no one wants the wall unit in the living room, I would be happy to have it. I don't know if I'll be able to move the furniture out of the house on this trip, but I hope to do that. In any event, I'll have it moved by the 17th or 18th. If I can help you on the house in general while I'm there I would be happy to do so. Just let me know.

That's all for now- hope all is well with you.

Kathy

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From: Kathleen Mullinx

To: kikibg@hotmail.com

Sent: Friday, May 28, 2004 3:31 PM

Subject: Follow-up

Dear Kiki,

Thanks for your note. After all that, I have changed my plan and will come up to Lexington on June 8. It turns out that I have a work obligation that just appeared this morning that requires me to be in New York on Wednesday and Thursday. I hope that is OK--also gives me more time to figure out how to move the furniture. I'm so happy that Dan can help with the wall unit--especially if I'll be the beneficiary! I would like to take the Saab for a bit of a ride at a convenient time--and, of course, to take some pictures.

Yesterday, I wrote you an e-mail, pressed "send"--I thought--and the screen went to "Page cannot be displayed", and I couldn't find it anywhere! What I sent you was the streamlined version. I had said that the archivist would come, do whatever she does on June 2, and then I was hoping that Alice and Maureen Hanson will be able to help identify things for distribution to any former students who want whatever of their work. I'm thinking that it would be good to get the archivist there, after which there is no particular sense of urgency with the project--although it will be great to finish and I do have the feeling that there are now plans for the space. I called today and Julia arranged for the archivist--your friend--to come the next week.

I actually went to Jack's school yesterday. It was wonderful and he was so adorable. I hadn't realized until Wednesday that there were no parents involved, so I was really glad to be there.

I'm so glad to know that Dan is home.

Kathy

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Solfanelli, Sara E.

From: Kathleen Mullinix [kathleenpmullinix@yahoo.com]
Sent: Friday, June 11, 2004 1:22 PM
To: kikibg@hotmail.com
Subject: Weekend

Dear Kiki,

I have realized that it will be necessary for me to stay here in the house until Sunday. I want to spend this time in the presence of your father's spirit. I had planned to leave today but I now know that it is not possible for me to do so.

I have some memory of your saying on Wednesday that someone is coming tomorrow. That is fine with me, just let me know what to expect.

If I can help out with anything, just let me know.

Kathy

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Solfanelli, Sara E.

From: Kiki Gross [kikibg@hotmail.com]
Sent: Sunday, May 16, 2004 7:57 PM
To: Kathleen Mullinix
Subject: Re: House, etc.

Kathy - Thanks for getting back to me. I'm glad that you have rented a place in NY. I hope that it's comfortable. It must be nice to oversee the construction without having to live in it.

Thanks for your concern about the house and my shoulder. I'm trying to not undo any good I've gotten from Physical Therapy. I went through the drawers in Len's room and downstairs this weekend so they are basically emptied. It looked like you things were only on top of the dressers upstairs and separate in the downstairs rooms. Of course you're welcome to do a photo session with the car and house. We are going to be closing on that last Friday in June but the people who are taking most of the furniture (bedroom stuff) will be coming the weekend before. I'm sorry to keep moving things up, but because of the weekends that's how it's working out. Can I let you know about the furniture? The print is all yours.

I can understand your wanting to keep all his clothes - if you want me to go thru things with you I can. If you have any ideas of what you'd like us to do with the things you don't want (what would make you feel best), please let me know.

That's all for now. Have a good week if we don't talk before then.

Kiki

— Original Message —

From: Kathleen Mullinix
To: kikibg@hotmail.com
Sent: Saturday, May 15, 2004 3:07 PM
Subject: House, etc.

Dear Kiki,

Having emptied my parents' house, I don't envy you your task. I hope your knees hold out better than mine did. I'm also worried about your shoulder.

I'm not sure when I'll be up in Lexington next. I'd planned on being there over Memorial Day but "Grandparents' Day" is on the 27th at Jack's school and Kathleen has asked me to attend. Considering all of the trauma in December, I can't really say no. So that's to be figured out.

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